



August 24, 1999

Ms. Stephanie A. Osburn
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-2384

Dear Ms. Osburn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127346.

The City of El Paso (the "city") received a written request from a city employee for "the specific allegations made against me" by another named city employee. You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You contend that section 552.103 applies to the information at issue because the information

relates to a personnel matter that is under current investigation by the El Paso City Attorney's Office. At the conclusion of this investigation, disciplinary action may result against several City employees and at that time these employees will have the right to appeal any such punishment to the City's Civil Service Commission. . . . We submit that these hearings before the commission or alternatively, a hearing officer, are litigation or substantially similar to litigation as to make it the equivalent thereof.

In this instance, this office need not reach the issue of whether a civil service hearing before the city constitutes "litigation" for purposes of section 552.103 because, even assuming *arguendo* that such is the case, you have not demonstrated that the likelihood of such "litigation" is more than mere conjecture at this time. See Open Records Decision No. 328 (1982). We also note that you have not apprised this office of any change of status regarding this issue in the ensuing months since you first requested a decision from this office. See Open Records Decision No. 638 (1996). Because you have not demonstrated that the requested information is protected from public disclosure under section 552.103(a), the city must release the information in its entirety, with the following caveat.

We note that some of the records at issue contain information that reveals whether city employees have family members. Section 552.117(1) of the Government Code excepts such information from disclosure, but only if the respective employee requested that this information be kept confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). If the city employees made the election prior to the date on which the city received the written request, the city must withhold this type of information pursuant to section 552.117(1). Otherwise, the information about employees' family members must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hattaway". The signature is written in dark ink and is positioned above the typed name and title.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/nc

Ref: ID# 127346

Encl. Submitted documents

cc: Mr. Hector Montes
El Paso Zoo
4001 Paisano
El Paso, Texas 79905
(w/o enclosures)